

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDREW MITTOWER,	:	
	:	NO. 1:10-CV-00750
Petitioner,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
WARDEN, CHILLICOTHE	:	
CORRECTIONAL INSTITUTION,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation, (doc. 13) and Petitioner's objections thereto (doc. 15). In her Report and Recommendation, the Magistrate Judge recommends that Petitioner's petition for habeas relief be denied with prejudice, that Petitioner be denied a certificate of appealability, and that the Court certify that an appeal of this Opinion and Order would not be taken in good faith.

The facts and procedural history are well-detailed in the Magistrate Judge's Report and Recommendation and will not be reiterated here. In brief, Petitioner was convicted through a bench trial of one count of aggravated theft, three counts of forgery and one count of money laundering, all in violation of Ohio statutes. He was sentenced to an aggregate prison term of eleven years. In challenging his incarceration, he raises four grounds for relief: (i) that certain funds were inappropriately found to be

proceeds of unlawful activity within the meaning of Ohio Revised Code 1315.55(A); (ii) that his money laundering conviction was not supported by sufficient evidence and is against the manifest weight of the evidence; (iii) that his conviction and sentence are inappropriate because theft and money laundering and theft and forgery are allied offenses of similar import; and (iv) that his sentence of consecutive prison terms was made without the trial court making the findings required by Ohio Revised Code 2929.14(E)(4).

The Magistrate Judge concluded that grounds one and two are without merit because the state-court decision was not in contravention of governing Supreme Court precedents and that grounds three and four are procedurally defaulted and waived because Petitioner failed to present them to the state courts appropriately.

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon thorough consideration of the foregoing, the Court finds Petitioner's objections unpersuasive and determines that the Magistrate Judge's Report and Recommendation is thorough, well-reasoned and correct. The Court thus AFFIRMS and ADOPTS it in its entirety (doc. 13); DENIES Petitioner's objections (doc. 15), and DENIES WITH PREJUDICE Petitioner's habeas petition (doc. 4).

The Court DECLINES to issue a certificate of

appealability with respect to Petitioner's claims for relief because "jurists of reason" would not find it debatable whether this Court is correct in its procedural rulings, and Petitioner has failed to make a substantial showing of the denial of a constitutional right. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000); 28 U.S.C. § 2253(c), Fed. R. App. P. 22(b). Pursuant to 28 U.S.C. 1915(1)(c), this Court CERTIFIES that any appeal of this order will not be taken in good faith, and therefore DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity. See Fed. R. App. P. 24(a); Kincade v. Sparkman, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Dated: April 17, 2012

/s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge